

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACCESS 220, LLC)	
)	WT Docket No. 02-224
Request for Waivers To Provide Band)	
Management Services Utilizing Licenses In the)	
220-222 MHz Band)	

ORDER ON RECONSIDERATION

Adopted: November 10, 2003

Released: November 12, 2003

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Order on Reconsideration* addresses the Petition for Reconsideration and Clarification filed by Warren C. Havens and Telesaurus Holdings GB, LLC dba LMS Wireless (Petitioners) on November 15, 2002.¹ Petitioners seek reconsideration of the Wireless Telecommunications Bureau's (Bureau) October 16, 2002, *Memorandum Opinion and Order*² that granted the above-captioned waiver request of Access 220, LLC (Access 220).³ For the reasons discussed below, we deny the Petition.

II. BACKGROUND

2. On July 3, 2002, Access 220 filed its request seeking limited waiver of Sections 90.733, 90.725, and 90.769 of the Commission's Rules⁴ in order to provide band manager services to its newly acquired 220-222 MHz licenses.⁵ Public Notice seeking comment on the Waiver Request was released on August 6, 2002.⁶ After carefully considering the record in the proceeding, we granted the Waiver Request to allow Access 220 to act as a band manager, with certain restrictions, for the spectrum

¹ Petition for Reconsideration and Clarification, WT Dkt. No. 02-224, filed by Warren C. Havens and Telesaurus Holdings GB, LLC dba LMS Wireless (Nov. 15, 2002) (Petition).

² Access 220, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 20464 (2002) (*MO&O*).

³ Request for Waivers of Access 220, LLC, To Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, WT Dkt. No. 02-224 (filed July 3, 2002) (Waiver Request). Access 220 is the wholly-owned subsidiary of Access Spectrum, LLC, a band manager licensee in the 700 MHz Guard Band.

⁴ 47 C.F.R. §§ 90.733, 90.725, 90.769.

⁵ *MO&O*, 17 FCC Rcd at 20465 ¶ 4. Access 220 sought a waiver of Sections 90.733 (permissible use restrictions) and 90.725 and 90.769 (construction requirements) of the Commission's Rules.

⁶ See Wireless Telecommunications Bureau Seeks Comment on Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, *Public Notice*, DA 02-1939 (rel. Aug. 6, 2002).

authorized under its current 220-222 MHz licenses.⁷ We also waived the construction requirements of Sections 90.725 and 90.769 of the Commission's Rules.⁸ Petitioners filed a timely petition seeking clarification or reconsideration of the waiver grant, arguing that the Bureau failed to explain how Access 220's Waiver Request met the waiver standard as set forth in the Commission's Rules.⁹ Access 220 filed an opposition¹⁰ and Petitioners filed a reply.¹¹ Petitioners also filed a supplement to the Petition on May 7, 2003.¹²

III. DISCUSSION

3. As an initial matter, we disagree with Petitioners' claim that the *MO&O* fails to explain which waiver standard was employed by the Bureau.¹³ The statement in the *MO&O* that "[g]rant of the Access 220 waiver request thus meets our section 1.925 waiver requirements" sufficiently makes clear that the waiver request meets the waiver standard under Section 1.925 of the Commission's Rules.¹⁴ Moreover, there is no substantive difference between the waiver standard enunciated under Section 1.925 and Section 1.3 of the Commission's Rules.¹⁵

4. We also disagree with Petitioners' main argument that the Bureau did not explain why Access 220 "is entitled to the grant."¹⁶ The *MO&O* specifically addresses the Commission's waiver standard and details the reasons why Access 220's request met that standard.¹⁷ Indeed, the *MO&O* states

⁷ *MO&O*, 17 FCC Rcd at 20470-71 ¶ 17.

⁸ 47 C.F.R. §§ 90.725, 90.769.

⁹ Petition at 1.

¹⁰ Opposition to Petition for Reconsideration and Clarification, filed by Access 220, LLC (Nov. 27, 2002) (Opposition).

¹¹ Reply to Opposition to Petition for Reconsideration and Clarification, filed by Warren C. Havens and Telesaurus Holdings GB, LLC dba LMS Wireless (Dec. 11, 2002) (Reply).

¹² Supplement to Petition for Reconsideration and Clarification, filed by Warren C. Havens and Telesaurus Holdings GB, LLC dba LMS Wireless (May 7, 2003) (Supplement). We note that this Supplement suffers from several defects. First, the Supplement is nearly six months late, as supplements must be filed within the same 30-day period as the underlying petition for reconsideration. 47 C.F.R. § 1.106(f). Second, it appears that the Supplement was not "served upon parties to the proceeding." *Id.* Third, the Supplement mostly argues that the Commission was incorrect in denying the Petition for Declaratory Ruling or Waiver Request filed by Warren C. Havens on October 7, 2002, regarding another matter. This proceeding is not the place to seek reconsideration of that other order. We have, nonetheless, reviewed the Supplement. While Petitioners claim that the denial of the waiver in the other case is inconsistent with the grant of the waiver in the instant case, the waiver requests at issue in these cases deal with different wireless services, different rule sections, and different facts, and we therefore find that Petitioners' discussion in the Supplement provides nothing of probative value to the instant case.

¹³ Petition at 2. Petitioners claim that it is unclear whether the waiver was granted under Section 1.925 or Section 1.3 of the Commission's Rules.

¹⁴ *MO&O*, 17 FCC Rcd at 20469 ¶ 15.

¹⁵ See *BellSouth v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999); Application For Review of BellSouth Wireless, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 14031, 14037-38 ¶ 11 (1997).

¹⁶ Reply at 2.

¹⁷ *MO&O*, 17 FCC Rcd at 20467-69 ¶ 11-15. Pursuant to section 1.925(b)(3) of the Commission's rules, a waiver request may be granted if it is shown that: (1) the underlying purpose of the rule would not be served, or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3).

that a grant of the waiver “would further the public interest by facilitating the Commission’s stated objectives for the 220 MHz spectrum.”¹⁸ In this connection, the Bureau found, *inter alia*, that Access 220’s proposed band manager operations in the 220 MHz band would give potential users of 220 MHz spectrum an additional option for deploying 220 MHz facilities, allow for tailored coverage service areas, allow for expanded usage opportunities, and promote more efficient spectrum use.¹⁹ The Bureau also stated that “the underlying purpose of Section 90.733 would not be served if the requested waiver were denied.”²⁰ Thus, we find that the *MO&O* “clearly articulated the standard that was applied”²¹ and makes specific findings as to the first prong of the waiver standard under section 1.925(b)(3)(i).²²

5. Finally, we reject Petitioners’ argument that the *MO&O* suggests future Access 220 waiver requests will be automatically granted.²³ To the contrary, although Access 220 asked that the grant of its Waiver Request also apply to future 220 MHz licenses it might acquire, footnote 35 in the *MO&O* specifically states that the “waiver is granted only for the authorizations included in the underlying Waiver Request.”²⁴ Any future waivers sought by Access 220 (or any other 220 MHz licensee) will be reviewed individually, under the criteria set forth in Section 1.925 of the Commission’s Rules.²⁵ Consequently, Petitioners’ concerns regarding this matter are unfounded.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 405(a) and Sections 0.131, 0.331, and 1.106 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331, 1.106, the Petition for Reconsideration and Clarification filed by Warren C. Havens and Telesaurus Holdings GB, LLC dba LMS Wireless on November 15, 2003, IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

John Muleta
Chief, Wireless Telecommunications Bureau

¹⁸ *MO&O*, 17 FCC Rcd at 20468 ¶ 12.

¹⁹ *MO&O*, 17 FCC Rcd at 20468-69 ¶ 14.

²⁰ *MO&O*, 17 FCC Rcd at 20469 ¶ 15.

²¹ Opposition at 2.

²² 47 C.F.R. § 1.925(b)(3)(i).

²³ Petition at 5.

²⁴ *MO&O*, 17 FCC Rcd at 20469 ¶ 15 n.35.

²⁵ 47 C.F.R. § 1.925.